

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

RENE F. FERNANDEZ,

Case No. 2:16-CV-812 JCM (NJK)

Plaintiff(s),

ORDER

V.

ROMEO ARANAS, et al.,

Defendant(s).

Presently before the court is defendant Romeo Aranas's motion for summary judgment.
(ECF No. 15). Plaintiff Rene Fernandez filed a response (ECF No. 40), to which Aranas replied
(ECF No. 43).

16 Also before the court is plaintiff's motion to extend time to respond to defendant's motion
17 for summary judgment. (ECF No. 34). Defendant Aranas filed a response (ECF No. 38). Plaintiff
18 has not filed a reply, and the time for doing so has since passed.

Also before the court is defendant Aranas's motion to dismiss defendants Hanf, Chang, Holmes, and Su from the action for lack of service. (ECF No. 48). Plaintiff has not filed a response, and the time for doing so has since passed.

Also before the court is plaintiff's "motion to deny defendant's motions, oppositions, replies, and request for Jury Trial." (ECF No. 53). Defendant Aranas filed a response. (ECF No. 54). Plaintiff has not filed a reply, and the time for doing so has since passed.

Also before the court is defendant Aranas's motion to strike plaintiff's amended complaint. (ECF No. 65). Plaintiff has not filed a response, and the time for doing so has since passed.

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1 **I. Background**

2 The present case involves a dispute over whether prison medical staff provided adequate
3 medical services to an inmate. Plaintiff was incarcerated at High Desert State Prison (“HDSP”)
4 from June 3, 2011, through August 28, 2014, when he was transferred to Northern Nevada
5 Correctional Center (“NNCC”). (ECF No. 4). Plaintiff alleges that during his time at HDSP,
6 medical staff did not adequately attend to his medical needs.

7 Plaintiff has a history of high blood pressure. (ECF No. 15-3). Prior to his incarceration
8 at HDSP, plaintiff was at Clark County Detention Center (“CCDC”). While at CCDC, medical
9 staff prescribed Amlodipine to control plaintiff’s blood pressure. *Id.* (transfer records from CCDC
10 to HSDP refer to plaintiff’s medication as “Amlodipine”). Plaintiff claims that the drug he took
11 while at CCDC was called Norvasc. (ECF No. 4). Norvasc is a brand-name drug with the same
12 chemical composition as Amlodipine. *See* (ECF No. 15-4) (declaration of Dr. Romeo Aranas)
13 (stating that Amlodipine is the generic name for Norvasc). Medical staff at HDSP administered
14 10 mg doses of Amlodipine to plaintiff from his intake at HDSP through February of 2013. (ECF
15 No. 15-3). Plaintiff asserts that he requested Norvasc instead of Amlodipine. (ECF No. 4).
16 Plaintiff signed medication logs acknowledging his receipt of the brand-name drug Norvasc on at
17 least seven occasions. (ECF No. 15-3).

18 Plaintiff complained of health issues while taking Amlodipine/Norvasc. (ECF No. 4). On
19 November 14, 2011, plaintiff sent a prison kite¹ claiming that his left hand was swollen, he was in
20 lots of pain, and he needed medical attention. (ECF No. 15-3). Medical staff met with plaintiff
21 the next day and prescribed ibuprofen.

22 On December 23, 2012, plaintiff sent a kite requesting a private medical consultation. *Id.*
23 The next day, HDSP Doctor Ted Hanf ordered labs and a follow-up appointment. *Id.* On
24 December 26, 2013, staff collected labs from plaintiff for urinalysis. *Id.* at 52.

25 On January 24, 2013, plaintiff filed a kite complaining that his labs had been cancelled and
26 complaining of severe kidney pain lasting three weeks. *Id.* at 34. Plaintiff requested that staff

28 ¹ A kite is a prisoner’s request for something from the prison facility. In the medical context, it is usually a request to see a medical services provider.

1 change his blood pressure medication from Amlodipine to Atenolol. *Id.* On January 31, 2013, Dr.
2 Hanf ordered additional labs and scheduled a follow-up appointment with plaintiff. *Id.* at 27.

3 On February 7, 2013, Dr. Hanf met with plaintiff. *Id.* Dr. Hanf's notes indicate plaintiff
4 was experiencing back pain and plaintiff attributed the pain to Norvasc. *Id.* at 37. Plaintiff reported
5 prior use of Atenolol, and stated he preferred Atenolol as a blood pressure medication. *Id.* Dr.
6 Hanf discontinued plaintiff's Norvasc prescription and placed plaintiff on 100 mg of Metoprolol,
7 another blood pressure medication. *Id.* at 27, 37. Dr. Hanf scheduled a follow-up appointment in
8 a month. *Id.* at 37. On February 15, 2013, LabCorp completed processing of plaintiff's remaining
9 labs. *Id.* at 54–55.

10 For the next few months, plaintiff failed to report to numerous medical appointments.
11 Accordingly, records of plaintiff's initial response to Metoprolol are sparse.

12 On June 28, 2013, plaintiff filed an “emergency grievance” with prison staff indicating that
13 he felt “sick with dizziness and a headache, with intense pressure in the back of [his] head,
14 vomiting and loose bowel movements.” (ECF No. 15-2). That same day, staff provided plaintiff
15 with an immediate refill of his blood pressure medication. *Id.*

16 Between February of 2013 and August of 2014 (when plaintiff was transferred to NNCC),
17 staff treated plaintiff's blood pressure with multiple combinations of Metoprolol, Lisinopril,
18 Atenolol, and Amlodipine. (ECF No. 15-3) (indicating numerous alterations to plaintiff's
19 medication regimen). When plaintiff did attend appointments, he would sometimes describe pain,
20 negative side effects, and problems with his digestive system. *Id.* Plaintiff at times refused to take
21 prescribed medications, including Norvasc and ibuprofen. (ECF No. 15-3 at 28, 55–56).

22 On November 22, 2013, Fernandez filed an informal grievance regarding HDSP staff's
23 treatment of his blood pressure. (ECF No. 15-1). On December 31, 2016, HDSP medical staff
24 responded to plaintiff's informal grievance by noting staff's efforts to control plaintiff's blood
25 pressure and noting that periodic follow-up visits will help staff continue to monitor plaintiff's
26 blood pressure. (ECF No. 15-1 at 13).

27 As a part of his informal grievance, plaintiff had requested a remedy of being prescribed
28 “a non-generic Atenolol 25 mg or Norvasc 10 mg and Ibuprofen 400 mg.” *Id.* At the time he

1 made the request, he was already prescribed 25 mg doses of Atenolol. (ECF No. 15-3 at 28). On
2 December 16, 2013, HDSP staff prescribed plaintiff Norvasc, but on January 16, 2014, plaintiff
3 signed a legal refusal of the prescription for Norvasc. *Id.* at 28, 55.

4 On January 28, 2014, plaintiff filed a first-level grievance disagreeing with the medical
5 staff's response to his informal grievance. *Id.* at 14–17. On February 13, 2014, medical staff
6 responded. *Id.* at 18. The response noted that high blood pressure symptoms evolve, and
7 sometimes medication that previously worked will no longer prove effective and “must change.”
8 *Id.*

9 On March 6, 2014, plaintiff filed a second-level grievance disagreeing with the first-level
10 response. *Id.* at 22. On April 8, 2014, Dr. Aranas, acting NDOC medical director, reviewed and
11 upheld the first-level response. *Id.*

12 On May 22, 2014, plaintiff filed a kite stating that his blood pressure was “out of control”
13 since he arrived at HDSP and that he needed medical attention to receive adequate medications.
14 *Id.* at 44. On June 2, 2014, medical staff met with plaintiff and reviewed his medications. *Id.* at
15 30. Medical records indicate this was the last interaction between plaintiff and HDSP medical
16 staff prior to plaintiff’s transfer to NNCC on August 28, 2014. *Id.*

17 On April 8, 2016, plaintiff filed his complaint alleging deliberate indifference to a serious
18 medical need. (ECF No. 4). Plaintiff alleges that the HDSP staff’s failure to properly adjust his
19 blood pressure medication caused painful side effects, including kidney pain. (ECF No. 4). On
20 January 6, 2017, the parties attended a court-sponsored mediation. (ECF No. 8). The parties did
21 not reach a settlement.

22 On December 7, 2017, plaintiff filed an amended complaint against defendants Aranas,
23 Chang, Hanf, Holmes, and Su. (ECF No. 61). On December 20, 2017, defendant Aranas filed a
24 motion to strike plaintiff’s amended complaint. (ECF No. 65).

25 **II. Legal Standard**

26 *a. Summary judgment*

27 The Federal Rules of Civil Procedure allow summary judgment when the pleadings,
28 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,

1 show that “there is no genuine dispute as to any material fact and the movant is entitled to judgment
2 as a matter of law.” Fed. R. Civ. P. 56(a). A principal purpose of summary judgment is “to isolate
3 and dispose of factually unsupported claims” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–
4 24 (1986).

5 For purposes of summary judgment, disputed factual issues should be construed in favor
6 of the non-moving party. *Lujan v. Nat'l Wildlife Fed.*, 497 U.S. 871, 888 (1990). However, to be
7 entitled to a denial of summary judgment, the non-moving party must “set forth specific facts
8 showing that there is a genuine issue for trial.” *Id.*

9 In determining summary judgment, the court applies a burden-shifting analysis. “When
10 the party moving for summary judgment would bear the burden of proof at trial, it must come
11 forward with evidence which would entitle it to a directed verdict if the evidence went
12 uncontested at trial.” *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480
13 (9th Cir. 2000). Moreover, “[i]n such a case, the moving party has the initial burden of establishing
14 the absence of a genuine issue of fact on each issue material to its case.” *Id.*

15 By contrast, when the non-moving party bears the burden of proving the claim or defense,
16 the moving party can meet its burden in two ways: (1) by presenting evidence to negate an essential
17 element of the non-moving party’s case; or (2) by demonstrating that the non-moving party failed
18 to make a showing sufficient to establish an element essential to that party’s case on which that
19 party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24. If the moving
20 party fails to meet its initial burden, summary judgment must be denied and the court need not
21 consider the non-moving party’s evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–
22 60 (1970).

23 If the moving party satisfies its initial burden, the burden then shifts to the opposing party
24 to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith
25 Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the
26 opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient
27 that “the claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing
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1 versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626,
2 630 (9th Cir. 1987).

3 **b. Leave to amend**

4 Federal Rule of Civil Procedure 15 states,

5 (1) *Amending as a Matter of Course.* A party may amend its pleading once as a
6 matter of course within:

- 7 (A) 21 days after serving it, or
8 (B) if the pleading is one to which a responsive pleading is required, 21 days
9 after service of a responsive pleading or 21 days after service of a motion
under Rule 12(b), (e), or (f), whichever is earlier.

8 (2) *Other Amendments.* In all other cases, a party may amend its pleading only with
9 the opposing party’s written consent or the court’s leave. The court should freely
give leave when justice so requires.

10 Fed. R. Civ. P. 15(a). The United States Supreme Court has interpreted Rule 15(a) and confirmed
11 the liberal standard district courts must apply when granting such leave. *See Foman v. Davis*, 371
12 U.S. 178, 182 (1962). However, the court in *Foman* noted an exception to granting such leave
13 arises when amendment of a complaint would be futile. *Id.* In such cases, courts need not grant
14 leave to amend. *Id.*

15 **c. Motion to strike**

16 Federal Rule of Civil Procedure 12(f) provides that “[t]he court may strike from a pleading
17 an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R.
18 Civ. P. 12(f). Additionally, district courts have inherent power to control their own dockets,
19 including the power to strike items from the docket. *Ready Transp., Inc. v. AAR Mfg., Inc.*, 627
20 F.3d 402, 404 (9th Cir. 2010).

21 **III. Discussion**

22 **a. Defendant Aranas’s motion for summary judgment**

23 As an initial matter, the court will grant plaintiff’s motion to extend time to file a response
24 to defendant’s motion for summary judgment. (ECF No. 34). Defendant Aranas noted in his
25 response to plaintiff’s motion to extend time that he would not oppose granting plaintiff until
26 August 15, 2017 to file a response. (ECF No. 38). Plaintiff filed his response on August 14, 2017.
27 (ECF No. 40). Accordingly, as granting the extension of time promotes disposition on the merits
28 and does not prejudice defendant, the court will grant plaintiff’s motion.

1 The Eighth Amendment prohibits the imposition of cruel and unusual punishment and
2 “embodies ‘broad and idealistic concepts of dignity, civilized standards, humanity, and decency.’”
3 *Estelle v. Gamble*, 429 U.S. 97, 102 (1976). A prison official violates the Eighth Amendment
4 when he acts with “deliberate indifference” to the serious medical needs of an inmate. *Farmer v.*
5 *Brennan*, 511 U.S. 825, 828 (1994). “To establish an Eighth Amendment violation, a plaintiff
6 must satisfy both an objective standard—that the deprivation was serious enough to constitute
7 cruel and unusual punishment—and a subjective standard—deliberate indifference.” *Snow v.*
8 *McDaniel*, 681 F.3d 978, 985 (9th Cir. 2012).

9 To establish the first prong, “the plaintiff must show a serious medical need by
10 demonstrating that failure to treat a prisoner’s condition could result in further significant injury
11 or the unnecessary and wanton infliction of pain.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir.
12 2006) (internal quotations omitted). To satisfy the deliberate indifference prong, a plaintiff must
13 show “(a) a purposeful act or failure to respond to a prisoner’s pain or possible medical need and
14 (b) harm caused by the indifference.” *Id.* “Indifference may appear when prison officials deny,
15 delay or intentionally interfere with medical treatment, or it may be shown by the way in which
16 prison physicians provide medical care.” *Id.* (internal quotations omitted). When a prisoner
17 alleges that delay of medical treatment evinces deliberate indifference, the prisoner must show that
18 the delay led to further injury. *See Shapley v. Nevada Bd. of State Prison Comm’rs*, 766 F.2d 404,
19 407 (9th Cir. 1985) (holding that “mere delay of surgery, without more, is insufficient to state a
20 claim of deliberate medical indifference”).

21 A difference of opinion between medical professionals concerning the appropriate course
22 of treatment generally does not amount to deliberate indifference to serious medical needs.
23 *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989). Additionally, “[a] difference of opinion
24 between a prisoner-patient and prison medical authorities regarding treatment does not give rise to
25 a [§] 1983 claim.” *Franklin v. State of Or., State Welfare Div.*, 662 F.2d 1337, 1344 (9th Cir.
26 1981). To establish that a difference of opinion amounted to deliberate indifference, the prisoner
27 “must show that the course of treatment the doctors chose was medically unacceptable under the
28

1 circumstances” and “that they chose this course in conscious disregard of an excessive risk to [the
2 prisoner’s] health.” *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996).

3 “[A] complaint that a physician has been negligent in diagnosing or treating a medical
4 condition does not state a valid claim of medical mistreatment under the Eighth Amendment.
5 Medical malpractice does not become a constitutional violation merely because the victim is a
6 prisoner.” *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). Even gross negligence is insufficient to
7 establish deliberate indifference to serious medical needs. *See Toguchi v. Chung*, 391 F.3d 1051,
8 1060 (9th Cir. 2004).

9 Here, plaintiff’s complaint does not establish deliberate indifference to a serious medical
10 need. During his time at HDSP, medical staff monitored his blood pressure condition. (ECF No.
11 15-3). Plaintiff’s medical file contains 19 separate HDSP physician’s orders concerning treatment
12 of plaintiff’s blood pressure and other chronic conditions. *Id.* Nursing staff recorded plaintiff’s
13 blood pressure at least twenty times. *Id.* HDSP staff ordered and reviewed lab work related to
14 plaintiff five times. *Id.* Medical staff offered plaintiff treatments that included prescription drug
15 medications. *Id.* When plaintiff notified staff of medical emergencies, staff immediately followed
16 up with him and tried to address his medical needs. *Id.*

17 Plaintiff did not always attend his medical appointments. Plaintiff rescheduled at least
18 three appointments because he was in the law library and at least two appointments because he
19 was at work or school. *Id.* A grievance response filed by a nurse supervisor on February 13, 2014,
20 notes “You have been seen by 6 providers in the past year. Additionally, we attempted to see you
21 4 more times but you were not in the unit for one reason or another.” (ECF No. 15-1 at 18).
22 Further, plaintiff refused to accept a medication prescription that he personally requested. (ECF
23 No. 15-3). Plaintiff’s medical records demonstrate that HDSP staff attempted to help plaintiff
24 control his blood pressure, but his conduct made the medical providers’ task difficult.

25 Plaintiff’s complaint and medical record while at HDSP establish at most that plaintiff and
26 HDSP staff had different opinions as to the appropriate treatment medications for plaintiff’s high
27 blood pressure. This does not establish deliberate indifference to serious medical needs. *See*
28 *Franklin*, 662 F.2d at 1344 (“A difference of opinion between a prisoner-patient and prison

1 medical authorities regarding treatment does not give rise to a [§] 1983 claim.”). The court will
2 grant defendant Aranas’s motion for summary judgment.

3 In light of the foregoing, the court need not consider defendant Aranas’s alternative ground
4 for summary judgment, that Aranas never personally participated in any of plaintiff’s medical care.

5 *b. Plaintiff’s amended complaint and defendant’s motion to strike*

6 Plaintiff filed an amended complaint on November 21, 2017. (ECF No. 61). Defendant
7 Aranas filed a motion to strike plaintiff’s amended complaint. (ECF No. 65).

8 Here, plaintiff cannot amend his complaint as a matter of course, as the amended complaint
9 was filed more than 21 days after responsive pleadings were filed. *See Fed. R. Civ. P. 15(a)(1).*

10 Further, the court will not grant leave to amend under Rule 15(a)(2). Plaintiff’s amended
11 complaint suffers from the same deficiencies outlined in the court’s ruling on defendant’s motion
12 for summary judgment. The allegations do not suggest that HDSP staff was deliberately
13 indifferent to plaintiff’s medical needs. Amendment here would be futile. The court will grant
14 defendant’s motion to strike plaintiff’s amended complaint.

15 *c. Other outstanding motions*

16 As the court will grant defendant’s motion for summary judgment, the court will deny
17 plaintiff’s “motion to deny defendant’s motions,” (ECF No. 48), and defendant Aranas’s motion
18 to dismiss, (ECF No. 48), as moot.

19 **IV. Conclusion**

20 Plaintiff has failed to provide evidence to support his conclusory assertion that HDSP staff
21 were deliberately indifferent to his medical needs. The court will grant defendant Aranas’s motion
22 for summary judgment.

23 Accordingly,

24 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant Aranas’s
25 motion for summary judgment (ECF No. 15) be, and the same hereby is, GRANTED.

26 IT IS FURTHER ORDERED that plaintiff’s motion to extend time to file a response to
27 defendant’s motion for summary judgment (ECF No. 34) be, and the same hereby is, GRANTED.
28

IT IS FURTHER ORDERED that defendant Aranas's motion to dismiss (ECF No. 48) be, and the same hereby is, DENIED as moot.

IT IS FURTHER ORDERED that plaintiff's "motion to deny defendant's motions, oppositions, replies, and request for Jury Trial" (ECF No. 53) be, and the same hereby is, DENIED as moot.

IT IS FURTHER ORDERED that defendant Aranas's motion to strike plaintiff's amended complaint (ECF No. 65) be, and the same hereby is, GRANTED.

DATED February 27, 2018.

Xem C. Mahan
UNITED STATES DISTRICT JUDGE